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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/687,451

10/16/2003

Richard J. Ernst

14303

8743

7590 10/31/2008  
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EXAMINER

EPFS, TODD MICHAEL

ART UNIT

PAPER NUMBER

3632

MAIL DATE

DELIVERY MODE

10/31/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/687,451	<b>Applicant(s)</b> ERNST ET AL.	
	<b>Examiner</b> Todd M. Epps	<b>Art Unit</b> 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,8,12,26 and 32-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,8,12,26 and 32-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This is the eightieth Office Action for serial number 10/687,451, Rod Hanger For Securing A Rod To A Substrate, filed on October 16, 2003.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-2, 8, 12, 26, 33, 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rejected to because it is not clearly understood how the anti-rotation element with a "hemisphered shape" can penetrate the substrate as the hemisphered shape doesn't have the ability to do this.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 8, 12, 26, and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,758,465 to Logue in view of U.S. Patent No.

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5,546,723 to Jones, and in further view of U.S. Patent No. 6,866,458 to Farrell et al. (Farrell).

Logue '465 discloses a rod hanger (fig. 5) comprising a generally planar mounting portion (24) defining a perimeter edge, and having a hole (52) along extending between a top surface (40) and a bottom surface (44) with the hole extending therebetween, a generally planar rod receiving portion (34) with a top surface (42), a bottom surface (46) and a hole (60) that includes a lip formation (64) disposed thereabout, and a connecting element (36), wherein the planes of the mounting and rod receiving portions are generally parallel, wherein rod receiving portion configured for threadably receiving the rod, wherein the rod hanger defines a unitary body with generally uniform thickness, wherein the hole of the mounting portion is coincident along the plane, has a radius and defines a circumference of 360 degrees, and wherein the mounting portion has four corners.

However, Logue '465 fails to specifically teach at least four anti-rotation elements on generally planar top surface of the mounting portion plane uniformly spaced from the hole, and wherein four anti-rotation members are configured for penetrating the substrate. Nevertheless, Jones '723 teaches a mounting portion (figure 1a-1c) with a central hole and four anti-rotation elements (14) disposed about the hole and spaced apart from each other by about 90 degrees along the circumference of the hole and dispose proximate to each of the corners of the mounting portion, and wherein four anti-rotation members are configured for penetrating the substrate. Accordingly, it would

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have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the hanger of Logue '465 with four anti-rotation elements disposed about the hole and spaced apart from each other by about 90 degrees along the circumference of the hole and dispose proximate to each of the corners of the mounting portion as taught in Jones '723 wherein doing so would provide for superior rotation prevention means.

Furthermore, Logue '465 in view of Jones '723 discloses the previous invention failing to specifically teach four anti-rotation elements have a generally truncated hollow cone shape. Nevertheless, Farrell '458 discloses a generally truncated hollow cone shape as shown in figure 8 for penetratingly engaging the wall. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the hanger of Logue '465 in view of Jones '723 to replace the shape of the four anti-rotation elements with truncated hollow cone shape because one would have motivated to provide a clean cut through the surface without tearing or crushing the surface as taught in Farrell '458.

Claims 32, 35, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logue '465 in view of Jones '723, and further in view of U.S. Patent No. 3,788,185 to Gutshall.

Logue '465 in view of Jones '723 fails to specifically teach wherein at least four anti-rotation members include a resilient cover, is secured by a chemical adhesive, and the resilient cover is formed of a polymer. Nevertheless, Gutshall '185 teaches wherein

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a mounting is secured by a resilient cover. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the rod hanger of Logue '465 in view of Jones '723 with four shape anti-rotation elements to include the resilient cover on each anti-rotation element as taught by Gutshall '185 wherein doing so would provide thereof for a protective coating on the anti-rotation members.

Furthermore, Logue '465 in view of Jones '723 discloses the previous invention failing to specifically teach wherein the resilient cover is secured by a chemical adhesive coat. Nevertheless, Gutshall '185 discloses wherein the resilient cover is secured by a chemical adhesive – a liquid bonding agent. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the rod hanger of Logue '465 in view of Jones '723 to include the adhesive coat because one would have motivated to provide a means for securing purpose as taught by Gutshall '185.

### ***Response to Arguments***

Applicant's arguments filed July 7, 2008 have been fully considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd M. Epps whose telephone number is (571)272-

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8282 – or – whose e-mail address is Todd.Epps@uspto.gov. The examiner can normally be reached on M-F (7:30-4:30).

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T.M.E./

Todd M. Epps  
Patent Examiner  
Art Unit 3632  
October 25, 2008

/Alfred Joseph Wujciak III/  
Primary Examiner, Art Unit 3632